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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

In re:

FITNESS RESOURCE, INC.,

Debtor,

Case No. 11-16630
(Chapter 11)

**SWANBLOSSOM INVESTMENTS, L.P.'S LIMITED OBJECTION TO
DEBTOR'S MOTION TO APPROVE REJECTION OF UNEXPIRED LEASES**

Swanblossom Investments, L.P. ("Swanblossom"), through counsel, hereby files this Limited Objection to Debtor's Motion to Approve Rejection of Unexpired Leases [Doc. No. 6] (the "Limited Objection"), and in support thereof shows this Court as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS AND PROCEDURAL HISTORY

2. On April 20, 2001, Debtor and Swanblossom entered into a Lease Agreement, which was amended by amendments effective on March 27, 2006, January 31, 2009 and September 16, 2010 (collectively the "Lease"), for certain space consisting of approximately 3,447 square feet located in the Perimeter Square West Shopping Center and having an address of 1165 Perimeter Center West, Suite 340, Atlanta, Georgia 30346 (the "Premises"). The Commencement Date of the Lease was April 1, 2001. The Lease expires on March 31, 2017.

3. On September 9, 2011 (the "Petition Date"), Debtor filed a Motion to Approve Rejection of Unexpired Leases (the "Rejection Motion"). In the Rejection Motion, Debtor seeks authority to reject certain unexpired leases for nonresidential real property, including the Lease. Debtor also seeks to make the rejection of the Lease retroactively effective to the Petition Date.

4. In the Rejection Motion, Debtor requests that counterparties not be permitted to set off or otherwise dispose of security deposits related to the leases identified therein absent approval of the Court. Swanblossom holds a security deposit of \$9,766.50 and seeks approval of its right to set off.

5. Debtor continues to operate its business from the Premises but has not paid rent and other charges owed pursuant to the Lease for September 2011 and October 2011. The Lease obligates Debtor to make monthly payments to Swanblossom for rent, taxes, insurance and common area maintenance charges on or before the 1st day of each month. Debtor's monthly obligations to Swanblossom total \$11,059.59. Debtor owes Swanblossom a total of \$22,119.18 as of the date of this Limited Objection, which consists of \$2,949.22 in pre-petition charges for September 1 - 8, \$8,110.37 in post-petition charges for September 9 - 30 and \$11,059.09 in post-petition charges for October 1 - 31.

6. The hearing on the Rejection Motion has been continued several times by Debtor and is currently scheduled for October 18, 2011.

ARGUMENT AND AUTHORITIES

7. Swanblossom adopts and incorporates by reference the arguments and authorities set forth in 8334 LEESBURG PIKE ASSOCIATES' LIMITED OBJECTION TO DEBTOR'S MOTION TO APPROVE REJECTION OF UNEXPIRED LEASES [Doc. No. 57]. In addition, Swanblossom argues against Debtor's requested relief based on the circumstances specific to the Lease.

8. Swanblossom does not object to the rejection of the Lease but does object to Debtor's request that the

rejection effective date be retroactive to the Petition Date. Debtor is still operating a business from the Premises. Swanblossom has not taken any action to delay Debtor from vacating the Premises and surrendering it to Swanblossom. The Lease should not be rejected until Debtor has vacated the Premises, surrendered possession of the Premises to Swanblossom, and abandoned all personal property that remains in the Premises after Debtor's surrender. Swanblossom proposes that the rejection date for the Lease be October 31, 2011, and that the rejection order provide Debtor is surrendering the Premises to Swanblossom on that date free and clear of any further claims by the estate relating to property remaining therein.

9. Debtor continues to operate its business from the Premises. As a result, 11 U.S.C. § 365(d)(3) requires Debtor to honor its obligations pursuant to the Lease until the Lease is rejected, including the payment of post-petition rent and charges due pursuant to the Lease. Debtor has not done so as of this Limited Objection. Swanblossom requests that this Court order Debtor to immediately honor its post-petition obligations pursuant to the Lease through the effective date of the rejection by paying Swanblossom the outstanding charges. The outstanding

rent and charges owed by Debtor to Swanblossom for September 9, 2011 through October 31, 2011 total \$19,169.96. If Debtor has not surrendered possession of the Premises and abandoned its interest in any remaining property therein as of October 31, 2011, then additional post-petition rent and charges may accrue pursuant to the Lease and Swanblossom expressly preserves its right to seek an order compelling payment of such charges.

10. Debtor's attempt to reject the Lease effective as of the Petition Date could also result in an unfair disadvantage to Swanblossom because it could increase Swanblossom's burden to recover rent and charges due for the post-petition period by requiring Swanblossom to establish an administrative claim under 11 U.S.C. § 503 rather than a right to payment pursuant to 11 U.S.C. § 365(d)(3).

11. Swanblossom is a secured creditor to the full extent of the security deposit and is entitled to set off pursuant to 11 U.S.C. § 553. Debtor owes Swanblossom prepetition rent and charges pursuant to the Lease in the amount of \$2,949.22. Following the rejection of the Lease, Swanblossom will be entitled to additional pre-petition damages pursuant to 11 U.S.C. § 502 (b)(6). Swanblossom

requests authority to set-off its pre-petition damage claims with the security deposit.

WHEREFORE, Swanblossom requests that this Court deny Debtor's request to retroactively reject the Lease effective as of September 9, 2011, order Debtor to immediately pay Swanblossom the outstanding rent and charges due to September and October 2011 or, in the alternative, grant Swanblossom an administrative priority award for post-petition rent and charges due from September 9, 2011 through the effective date of the Lease rejection, grant Swanblossom's request to set off the security deposit against pre-petition charges, including lease termination damages, and grant such other and further relief as is just and equitable.

This 7th day of October 2011.

/s/ Heather D. Brown
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CERTIFICATE OF SERVICE

I certify that on October 7, 2011, a copy of the foregoing **SWANBLOSSOM INVESTMENT, L.P.'S LIMITED OBJECTION TO DEBTOR'S MOTION TO APPROVE REJECTION OF UNEXPIRED LEASES** was filed with this Court using the CM/ECF system, which will send a copy to all parties and counsel of record. I further certify that a copy of the foregoing was served via FIRST CLASS MAIL to the parties indicated below:

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This 7th day of October 2011.

/s/ Heather D. Brown
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